

STOREY & MILLER  
COURT REPORTERS  
601 W. RIVERSIDE  
SUITE 1030  
SPOKANE, WA 99201

THE HONORABLE ROBERT H. WHALEY

Douglas E. Smith (WSBA No. 17319)  
Barbara J. Duffy (WSBA No. 18885)  
LANE POWELL SPEARS LUBERSKY LLP  
1420 Fifth Avenue, Suite 4100  
Seattle, Washington 98101-2338  
Telephone: (206) 223-7000  
Facsimile: (206) 223-7107

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

APR 03 2000

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

GABRIEL ALVAREZ, VIRGINIA )  
ALVAREZ, MARIA CHAVEZ, )  
RANULFO GUTIERREZ, PEDRO )  
HERNANDEZ, MARIA MARTINEZ, )  
RAMON MORENO, and ISMAEL )  
RODRIGUEZ, individually and as class )  
representatives, )

Plaintiffs, )

v. )

IBP, INC., a Delaware corporation, )

Defendant. )

CLASS ACTION

No. CT-98-5005-RHW

**DEFENDANT'S LR 56.1**

**STATEMENT OF FACTS IN  
SUPPORT OF MOTION FOR**

**SUMMARY JUDGMENT**

**DISMISSING PLAINTIFFS'**

**STATE LAW MINIMUM WAGE  
ACT CLAIMS**

In support of Defendant's Motion for Summary Judgment on Plaintiffs' State  
Minimum Wage Act Claims, defendant IBP, inc. ("IBP") submits the following  
statement of material facts:

DEFENDANT'S LR 56.1 STATEMENT OF FACTS IN  
SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
DISMISSING STATE LAW MWA CLAIMS - 1

115386.0001\675865.1

LANE POWELL SPEARS LUBERSKY LLP  
SUITE 4100  
1420 FIFTH AVENUE  
SEATTLE, WA 98101  
(206) 223-7000

ORIGINAL

1 Plaintiffs' claims in this action are based on the allegation that each of the eight  
2 representative plaintiffs performs a certain number of minutes or hours of work  
3 activities before and after each scheduled work day, and during employee break  
4 periods. See Plaintiffs' Second Amended Complaint at ¶¶ 8-12, 45-52.

6 In response to discovery requests from IBP, plaintiffs have provided or  
7 suggested the following high estimates of the specific amounts of time they claim to  
8 have engaged in such activities:<sup>1</sup>

11  
12 <sup>1</sup> IBP disputes the accuracy of these estimates, and disagrees with plaintiffs'  
13 claims that the alleged "off-the-clock" activities constitute compensable work time.  
14 However, for purposes of this motion only, IBP will assume the estimates provided or  
15 suggested in plaintiffs' discovery responses are accurate and reflect compensable  
16 work time.

18 It is evident in the Interrogatory responses that the time estimates are  
19 inconsistent. In an effort to take a consistently conservative approach, IBP used the  
20 highest estimates offered or suggested by each of the plaintiffs in response to an  
21 interrogatory requesting an estimate of their alleged uncompensated time. A more  
22 detailed explanation of how IBP arrived at the high estimates from the individual  
23 plaintiffs' discovery responses is provided in ¶ 5 of the Declaration of Barbara J.

24  
25  
26  
DEFENDANT'S LR 56.1 STATEMENT OF FACTS IN  
SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
DISMISSING STATE LAW MWA CLAIMS - 2

115386.0001\675865.1

LANE POWELL SPEARS LUBERSKY LLP  
SUITE 4100  
1420 FIFTH AVENUE  
SEATTLE, WA 98101  
(206) 223-7000

- 1) Plaintiff Gabriel Alvarez: 85 minutes;
- 2) Plaintiff Virginia Alvarez: 100 minutes;
- 3) Plaintiff Maria Chavez: 80 minutes;<sup>2</sup>
- 4) Plaintiff Ranulfo Gutierrez: 80 minutes;
- 5) Plaintiff Pedro Hernandez: 80 minutes;
- 6) Plaintiff Maria Martinez: 80 minutes;
- 7) Plaintiff Ramon Moreno: 80 minutes; and
- 8) Plaintiff Ismael Rodriguez: 80 minutes.

See Duffy Declaration at ¶ 5 and plaintiffs' responses to Interrogatory No. 4, collectively attached as Exhibit C to Duffy Declaration.

---

Duffy in Support of Defendant's Motion for Summary Judgment Dismissing Plaintiffs' State Law Minimum Wage Act Claims (herein called "Duffy Declaration").

<sup>2</sup> Due to the apparent discrepancies in Ms. Chavez's response and the resulting low estimates of her off-the-clock work as compared to the other named plaintiffs' estimates, IBP gave Ms. Chavez the benefit, not of her own high estimate of 70 minutes of off-the-clock work, but of the high estimate of the majority of her co-plaintiffs – 80 minutes of off-the-clock work everyday. Thus, IBP provided Ms. Chavez the benefit of an additional 10 minutes of off-the-clock work over and above even her own highest estimate. See Duffy Declaration at ¶ 5(d).

1 During the time period at issue in this lawsuit (June 30, 1995 to the present), the  
2 Washington Minimum Wage Act, as revised, has established a state minimum wage  
3 rate of \$4.90/hour (from June 1995 to December 1998), \$5.70/hour (from January  
4 1999 to January 1, 2000) and \$6.50/hour (from January 1, 2000 to present).

6 In order to determine whether the additional work hours alleged by plaintiffs  
7 cause their weekly pay rate to drop below these state statutory minimum wage rate  
8 levels, IBP has prepared a summary of payroll information from each of the named  
9 plaintiffs. The summary identifies the actual straight time pay for each workweek  
10 during the time period in question, and then measures that weekly pay against the total  
11 number of work hours alleged for the week. The net result is the alleged rate of pay  
12 that each plaintiff claims to have been paid for each and every week at issue, assuming  
13 that all of plaintiffs' allegations concerning work hours are true. IBP has prepared this  
14 summary using the actual payroll data for each of the named plaintiffs, together with  
15 the actual work hour estimates provided in plaintiffs' own individual discovery  
16 responses (as summarized above). See Duffy Declaration at ¶ 2; accompanying  
17 Declaration of Jean Olson in Support of Defendant's Motion for Summary Judgment  
18 Dismissing Plaintiffs' State Law Minimum Wage Act Claims ("Olson Declaration")  
19 and Exhibits 1-8 attached to Olson Declaration.  
20  
21  
22  
23  
24  
25  
26

DEFENDANT'S LR 56.1 STATEMENT OF FACTS IN  
SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
DISMISSING STATE LAW MWA CLAIMS - 4

115386.0001\675865.1

LANE POWELL SPEARS LUBERSKY LLP  
SUITE 4100  
1420 FIFTH AVENUE  
SEATTLE, WA 98101  
(206) 223-7000

1 No plaintiff has ever been paid a rate below the statutory minimum. In fact, the  
2 weekly pay for each plaintiff has significantly exceeded the minimum wage rate  
3 during each week of the plaintiffs' employment at IBP, even if the Court accepts all of  
4 plaintiffs' allegations in this case as true.  
5

6 1. **Gabriel Alvarez.** Attached as Exhibit 1 to the Olson Declaration is a  
7 Chart which accurately reflects the following information for plaintiff Gabriel Alvarez  
8 from July 1, 1995 to the present:  
9

10 a) **Pay Period.** ["Pay Period"]: Column No. 1 of the comparative  
11 wage chart identifies the specific ending date for each workweek for which payroll  
12 data and work hours have been collected and analyzed for Mr. Alvarez. See Olson  
13 Declaration at ¶ 5.  
14

15 b) **Total Work Hours Recorded.** ["Tot. Work Hrs. Recorded"]: The  
16 second column of the chart lists the total hours of work time recorded by Mr. Alvarez  
17 within the pay period. This column does not include time recorded for such non-work  
18 activities as vacations, sick time, holidays or jury duty. See Olson Declaration at ¶ 6.  
19

20 c) **Total Regular Compensation for Week.** ["Tot. Reg. Comp.  
21 Wk."]: This third column sets forth in dollars the total gross straight time (regular)  
22 earnings received by Mr. Alvarez for the hours worked in the given workweek. This  
23 column excludes any additional amounts Mr. Alvarez may have received for overtime,  
24  
25  
26

1 sunshine pay, or other bonuses. As a result, in some instances he may have received  
2 more compensation (and therefore a higher actual rate of pay) than the amounts listed.

3  
4 See Olson Declaration at ¶ 7.

5 d) **Paid Hourly Rate.** [“Paid Hourly Rate”]: This fourth column is  
6 calculated by dividing the total regular paid compensation in column three by the total  
7 hours worked in column two. This paid hourly rate typically will be the contract rate  
8 earned by Mr. Alvarez during the time period. See Olson Declaration at ¶ 8.

9  
10 e) **Additional Time Per Week Claimed.** [“Add’l Time Per Wk  
11 Claimed”]: The fifth column lists the additional number of hours that Mr. Alvarez  
12 claims to have worked during each workweek. This figure is based on the estimates  
13 provided in Mr. Alvarez’s own individual discovery responses. See Duffy  
14 Declaration at ¶ 2 and ¶ 5(a) and (b). To be conservative, IBP has used the highest  
15 estimates provided in Mr. Alvarez’s discovery responses. Id. at ¶ 2(a).

16  
17 f) **Total Time Including Claimed Time.** [“Total Time Inc. Claimed  
18 Time”]: The sixth column is the sum of the recorded hours and the additional work  
19 hours claimed by Mr. Alvarez as stated in Response to Interrogatories (the sum of the  
20 second and fifth columns). See Duffy Declaration at ¶ 2(b).

21  
22 g) **Claimed Hourly Rate.** [“Claimed Hourly Rate”]: The seventh  
23 column contains the claimed hourly rate that Mr. Alvarez claims to have been paid for  
24  
25  
26

1 each workweek, assuming that all of his allegations concerning work hours are  
 2 accepted as true. This rate of pay is calculated by dividing the total regular  
 3 compensation for the week (the third column) by the total claimed hours for the week  
 4 (the sixth column). See Duffy Declaration at ¶ 2(c). Even if the Court accepts all of  
 5 Mr. Alvarez's allegations at face value, this column demonstrates that Mr. Alvarez  
 6 was paid at a rate that exceeds the state minimum wage rate during each and every  
 7 week of employment at IBP.  
 8  
 9

10 h) **Minimum Wage Rate.** ["Min Wage"]: The eighth column lists  
 11 the applicable state minimum wage rate in effect during the given pay period. See  
 12 Duffy Declaration at ¶ 2(d).  
 13

14 2. **Virginia Alvarez.** Attached as Exhibit 2 to the Olson Declaration is a  
 15 Chart which accurately reflects the following information for plaintiff Virginia  
 16 Alvarez from July 1, 1995 to the present:  
 17

18 a) **Pay Period.** ["Pay Period"]: Column No. 1 of the comparative  
 19 wage chart identifies the specific ending date for each workweek for which payroll  
 20 data and work hours have been collected and analyzed for Ms. Alvarez. See Olson  
 21 Declaration at ¶ 5.  
 22

23 b) **Total Work Hours Recorded.** ["Tot. Work Hrs. Recorded"]: The  
 24 second column of the chart lists the total hours of work time recorded by Ms. Alvarez  
 25  
 26

1 within the pay period. This column does not include time recorded for such non-work  
2 activities as vacations, sick time, holidays or jury duty. See Olson Declaration at ¶ 6.

3  
4 **c) Total Regular Compensation for Week.** [Tot. Reg. Comp. Wk.]:

5 This third column sets forth in dollars the total gross straight time (regular) earnings  
6 received by Ms. Alvarez for the hours worked in the given workweek. This column  
7 excludes any additional amounts Ms. Alvarez may have received for overtime,  
8 sunshine pay, or other bonuses. As a result, in some instances she may have received  
9 more compensation (and therefore a higher actual rate of pay) than the amounts listed.  
10  
11 See Olson Declaration at ¶ 7.

12  
13 **d) Paid Hourly Rate.** ["Paid Hourly Rate"]: This fourth column is  
14 calculated by dividing the total regular paid compensation in column three by the total  
15 hours worked in column two. This paid hourly rate will typically be the contract rate  
16 earned by Ms. Alvarez during the time period. See Olson Declaration at ¶ 8.

17  
18 **e) Additional Time Per Week Claimed.** ["Add'l Time Per Wk  
19 Claimed"]: The fifth column lists the additional number of hours that Ms. Alvarez  
20 claims to have worked during each workweek. This figure is based on the estimates  
21 provided in Ms. Alvarez's own individual discovery responses. See Duffy  
22 Declaration at ¶ 2 and ¶ 5(c). To be conservative, IBP has used the highest estimates  
23 provided in Ms. Alvarez's discovery responses. Id. at ¶ 2(a).  
24  
25  
26



1           f)     **Total Time Including Claimed Time.** [“Total Time Inc. Claimed  
2 Time”]: The sixth column is the sum of the recorded hours and the additional work  
3 hours claimed by Ms. Alvarez as stated in Response to Interrogatories (the sum of the  
4 second and fifth columns). See Duffy Declaration at ¶ 2(b).

6           g)     **Claimed Hourly Rate.** [“Claimed Hourly Rate”]: The seventh  
7 column contains the claimed hourly rate that Ms. Alvarez claims to have been paid for  
8 each workweek, assuming that all of her allegations concerning work hours are  
9 accepted as true. This rate of pay is calculated by dividing the total regular  
10 compensation for the week (the third column) by the total claimed hours for the week  
11 (the sixth column). See Duffy Declaration at ¶ 2(c). Even if the Court accepts all of  
12 plaintiffs’ allegations at face value, this column demonstrates that Ms. Alvarez was  
13 paid at a rate that exceeds the state minimum wage rate during each and every week of  
14 employment at IBP.  
15

16           h)     **Minimum Wage Rate.** [“Min Wage”]: The eighth column lists  
17 the applicable state minimum wage rate in effect during the given pay period. See  
18 Duffy Declaration at ¶ 2(d).  
19  
20  
21  
22  
23  
24  
25  
26

1           3.     **Maria Chavez.** Attached as Exhibit 3 to the Olson Declaration is a  
2 Chart which accurately reflects the following information for plaintiff Maria Chavez  
3 from July 1, 1995 to the present:  
4

5           a)     **Pay Period.** ["Pay Period"]: Column No. 1 of the comparative  
6 wage chart identifies the specific ending date for each workweek for which payroll  
7 data and work hours have been collected and analyzed for Ms. Chavez. See Olson  
8 Declaration at ¶ 5.  
9

10           b)     **Total Work Hours Recorded.** ["Tot. Work Hrs. Recorded"]: The  
11 second column of the chart lists the total hours of work time recorded by Ms. Chavez  
12 within the pay period. This column does not include time recorded for such non-work  
13 activities as vacations, sick time, holidays or jury duty. See Olson Declaration at ¶6.  
14

15           c)     **Total Regular Compensation for Week.** ["Tot. Reg. Comp.  
16 Wk."]: This third column sets forth in dollars the total gross straight time (regular)  
17 earnings received by Ms. Chavez for the hours worked in the given workweek. This  
18 column excludes any additional amounts Ms. Chavez may have received for overtime,  
19 sunshine pay, or other bonuses. As a result, in some instances she may have received  
20 more compensation (and therefore a higher actual rate of pay) than the amounts listed.  
21  
22

23 See Olson Declaration at ¶ 7.  
24  
25  
26

1           d) **Paid Hourly Rate.** ["Paid Hourly Rate"]: This fourth column is  
2 calculated by dividing the total regular paid compensation in column three by the total  
3 hours worked in column two. This paid hourly rate will typically be the contract rate  
4 earned by Ms. Chavez during the time period. See Olson Declaration at ¶ 8.

5           e) **Additional Time Per Week Claimed.** ["Add'l Time Per Wk  
6 Claimed"]: The fifth column lists the additional number of hours that the majority of  
7 Ms. Chavez's co-plaintiffs claim to have worked during each workweek. Due to the  
8 apparent discrepancies in Ms. Chavez's own discovery responses and the resulting  
9 low estimates of her off-the-clock work per day (with a high estimate of 70 minutes  
10 which is 10 minutes less than the majority of her co-plaintiffs), IBP added 10 minutes  
11 to Ms. Chavez's highest daily estimate to account for any possible errors. See Duffy  
12 Declaration at ¶ 2 and ¶ 5(d). For purposes of this motion, IBP will assume that this  
13 higher estimate actually represents Ms. Chavez's claimed additional work hours.

14           f) **Total Time Including Claimed Time.** ["Total Time Inc. Claimed  
15 Time"]: The sixth column is the sum of the recorded hours and the additional work  
16 hours claimed by Ms. Chavez as stated in Response to Interrogatories (the sum of the  
17 second and fifth columns). See Duffy Declaration at ¶ 2(b).

18           g) **Claimed Hourly Rate.** ["Claimed Hourly Rate"]: The seventh  
19 column contains the claimed hourly rate that Ms. Chavez claims to have been paid for  
20  
21  
22  
23  
24  
25  
26

1 each workweek, assuming that all of her allegations concerning work hours are  
 2 accepted as true. This rate of pay is calculated by dividing the total regular  
 3 compensation for the week (the third column) by the total claimed hours for the week  
 4 (the sixth column). See Duffy Declaration at ¶ 2(c). Even if the Court accepts all of  
 5 plaintiffs' allegations at face value, this column demonstrates that Ms. Chavez was  
 6 paid at a rate that exceeds the state minimum wage rate during each and every week of  
 7 employment at IBP.  
 8

9  
 10 h) **Minimum Wage Rate.** ["Min Wage"]: The eighth column lists  
 11 the applicable state minimum wage rate in effect during the given pay period. See  
 12 Duffy Declaration at ¶ 2(d).  
 13

14 4. **Ranulfo Gutierrez.** Attached as Exhibit 4 to the Olson Declaration  
 15 is a Chart which accurately reflects the following information for plaintiff Ranulfo  
 16 Gutierrez from July 1, 1995 to the present.  
 17

18 a) **Pay Period.** ["Pay Period"]: Column No. 1 of the comparative  
 19 wage chart identifies the specific ending date for each workweek for which payroll  
 20 data and work hours have been collected and analyzed for Mr. Gutierrez. See Olson  
 21 Declaration at ¶ 5.  
 22

23 b) **Total Work Hours Recorded.** ["Tot. Work Hrs. Recorded"]: The  
 24 second column of the chart lists the total hours of work time recorded by  
 25  
 26

1 Mr. Gutierrez within the pay period. This column does not include time recorded for  
 2 such non-work activities as vacations, sick time, holidays or jury duty. See Olson  
 3 Declaration at ¶ 6.  
 4

5 c) **Total Regular Compensation for Week.** ["Tot. Reg. Comp.  
 6 Wk."]: This third column sets forth in dollars the total gross straight time (regular)  
 7 earnings received by Mr. Gutierrez for the hours worked in the given workweek.  
 8 This column has excluded any additional amounts Mr. Gutierrez may have received  
 9 for overtime, sunshine pay, or other bonuses. As a result, in some instances he may  
 10 have received more compensation (and therefore a higher actual rate of pay) than the  
 11 amounts listed. See Olson Declaration at ¶ 7.  
 12

13 d) **Paid Hourly Rate.** ["Paid Hourly Rate"]: This fourth column is  
 14 calculated by dividing the total regular paid compensation in column three by the total  
 15 hours worked in column two. This paid hourly rate typically will be the contract rate  
 16 earned by Mr. Gutierrez during the time period. See Olson Declaration at ¶ 8.  
 17

18 e) **Additional Time Per Week Claimed.** ["Add'l Time Per Wk  
 19 Claimed"]: The fifth column lists the additional number of hours that Mr. Gutierrez  
 20 claims to have worked during each workweek. This figure is based on the estimates  
 21 provided in Mr. Gutierrez's own individual discovery responses. See Duffy  
 22  
 23  
 24  
 25  
 26

1 Declaration at ¶ 2 and ¶ 5(e) and (f). To be conservative, IBP has used the highest  
2 estimates provided in Mr. Gutierrez's discovery responses. Id. at ¶ 2(a).

3  
4 f) **Total Time Including Claimed Time.** ["Total Time Inc. Claimed  
5 Time"]: The sixth column is the sum of the recorded hours and the additional work  
6 hours claimed by Mr. Gutierrez as stated in Response to Interrogatories (the sum of  
7 the second and fifth columns). See Duffy Declaration at ¶ 2(c).

8  
9 g) **Claimed Hourly Rate.** ["Claimed Hourly Rate"]: The seventh  
10 column contains the claimed hourly rate that Mr. Gutierrez claims to have been paid  
11 for each workweek, assuming that all of his allegations concerning work hours are  
12 accepted as true. This rate of pay is calculated by dividing the total regular  
13 compensation for the week (the third column) by the total claimed hours for the week  
14 (the sixth column). See Duffy Declaration at ¶ 2(d). Even if the Court accepts all of  
15 Mr. Gutierrez's allegations at face value, this column demonstrates that Mr. Gutierrez  
16 was paid at a rate that exceeds the state minimum wage rate during each and every  
17 week of employment at IBP.

18  
19 h) **Minimum Wage Rate.** ["Min Wage"]: The eighth column lists  
20 the applicable state minimum wage rate in effect during the given pay period. See  
21 Duffy Declaration at ¶ 2(e).

1           5.     **Pedro Hernandez.**       Attached as Exhibit 5 to the Olson Declaration  
2 is a Chart which accurately reflects the following information for plaintiff Pedro  
3 Hernandez from July 1, 1995 to the present:  
4

5           a)     **Pay Period.** ["Pay Period"]: Column No. 1 of the comparative  
6 wage chart identifies the specific ending date for each workweek for which payroll  
7 data and work hours have been collected and analyzed for Mr. Hernandez. See Olson  
8 Declaration at ¶ 5.  
9

10           b)     **Total Work Hours Recorded.** ["Tot. Work Hrs. Recorded"]: The  
11 second column of the chart lists the total hours of work time recorded by  
12 Mr. Hernandez within the pay period. This column does not include time recorded for  
13 such non-work activities as vacations, sick time, holidays or jury duty. See Olson  
14 Declaration at ¶ 6.  
15  
16

17           c)     **Total Regular Compensation for Week.** ["Tot. Reg. Comp.  
18 Wk."]: This third column sets forth in dollars the total gross straight time (regular)  
19 earnings received by Mr. Hernandez for the hours worked in the given workweek.  
20 This column excludes any additional amounts Mr. Hernandez may have received for  
21 overtime, sunshine pay, or other bonuses. As a result, in some instances he may have  
22 received more compensation (and therefore a higher actual rate of pay) than the  
23 amounts listed. See Olson Declaration at ¶ 7.  
24  
25  
26

1           d) **Paid Hourly Rate.** ["Paid Hourly Rate"]: This fourth column is  
 2 calculated by dividing the total regular paid compensation in column three by the total  
 3 hours worked in column two. This paid hourly rate will typically be the contract rate  
 4 earned by Mr. Hernandez during the time period. See Olson Declaration at ¶ 8.

6           e) **Additional Time Per Week Claimed.** ["Add'l Time Per Wk  
 7 Claimed"]: The fifth column lists the additional number of hours that Mr. Hernandez  
 8 claims to have worked during each workweek. This figure is based on the estimates  
 9 provided in Mr. Hernandez's own individual discovery responses. See Duffy  
 10 Declaration at ¶ 2 and ¶5 (g) and (h). To be conservative, IBP has used the highest  
 11 estimates provided in Mr. Hernandez's discovery responses. Id. at ¶ 2(a).

14           f) **Total Time Including Claimed Time.** ["Total Time Inc. Claimed  
 15 Time"]: The sixth column is the sum of the recorded hours and the additional work  
 16 hours claimed by Mr. Hernandez as stated in Response to Interrogatories (the sum of  
 17 the second and fifth columns). See Duffy Declaration at ¶ 2(b).

19           g) **Claimed Hourly Rate.** ["Claimed Hourly Rate"]: The seventh  
 20 column contains the claimed hourly rate that Mr. Hernandez claims to have been paid  
 21 for each workweek, assuming that all of his allegations concerning work hours are  
 22 accepted as true. This rate of pay is calculated by dividing the total regular  
 23 compensation for the week (the third column) by the total claimed hours for the week  
 24  
 25  
 26



1 (the sixth column). See Duffy Declaration at ¶ 2(c). Even if the Court accepts all of  
2 plaintiffs' allegations at face value, this column demonstrates that Mr. Hernandez was  
3 paid at a rate that exceeds the state minimum wage rate during each and every week of  
4 employment at IBP.  
5

6 h) **Minimum Wage Rate.** ["Min Wage"]: The eighth column lists  
7 the applicable state minimum wage rate in effect during the given pay period. See  
8 Duffy Declaration at ¶ 2(d).  
9

10 6. **Maria Martinez.** Attached as Exhibit 6 to the Olson Declaration is a  
11 Chart which accurately reflects the following information for plaintiff Maria Martinez  
12 from July 1, 1995 to the present:  
13

14 a) **Pay Period.** ["Pay Period"]: Column No. 1 of the comparative  
15 wage chart identifies the specific ending date for each workweek for which payroll  
16 data and work hours have been collected and analyzed for Ms. Martinez. See Olson  
17 Declaration at ¶ 5.  
18

19 b) **Total Work Hours Recorded.** ["Tot. Work Hrs. Recorded"]: The  
20 second column of the chart lists the total hours of work time recorded by Ms. Martinez  
21 within the pay period. This column does not include time recorded for such non-work  
22 activities as vacations, sick time, holidays or jury duty. See Olson Declaration at ¶ 6.  
23  
24  
25  
26

1           c)     **Total Regular Compensation for Week.** ["Tot. Reg. Comp.  
2     Wk."]: This third column sets forth in dollars the total gross straight time (regular)  
3     earnings received by Ms. Martinez for the hours worked in the given workweek. This  
4     column excludes any additional amounts Ms. Martinez may have received for  
5     overtime, sunshine pay, or other bonuses. As a result, in some instances she may have  
6     received more compensation (and therefore a higher actual rate of pay) than the  
7     amounts listed. See Olson Declaration at ¶ 7.

10           d)     **Paid Hourly Rate.** ["Paid Hourly Rate"]: This fourth column is  
11     calculated by dividing the total regular paid compensation in column three by the total  
12     hours worked in column two. This paid hourly rate will typically be the contract rate  
13     earned by Ms. Martinez during the time period. See Olson Declaration at ¶ 8.

16           e)     **Additional Time Per Week Claimed.** ["Add'l Time Per Wk  
17     Claimed"]: The fifth column lists the additional number of hours that Ms. Martinez  
18     claims to have worked during each workweek. This figure is based on the estimates  
19     provided in Ms. Martinez's own individual discovery responses. See Duffy  
20     Declaration at ¶ 2 and ¶ 5(i) and (j). To be conservative, IBP has used the highest  
21     estimates provided in Ms. Martinez's discovery responses. Id. at ¶ 2(a).

24           f)     **Total Time Including Claimed Time.** ["Total Time Inc. Claimed  
25     Time"]: The sixth column is the sum of the recorded hours and the additional work  
26

1 hours claimed by Ms. Martinez as stated in Response to Interrogatories (the sum of  
2 the second and fifth columns). See Duffy Declaration at ¶ 2(b).

3  
4 g) **Claimed Hourly Rate.** ["Claimed Hourly Rate"]: The seventh  
5 column contains the claimed hourly rate that Ms. Martinez claims to have been paid  
6 for each workweek, assuming that all of her allegations concerning work hours are  
7 accepted as true. This rate of pay is calculated by dividing the total regular  
8 compensation for the week (the third column) by the total claimed hours for the week  
9 (the sixth column). See Duffy Declaration at ¶ 2(c). Even if the Court accepts all of  
10 plaintiffs' allegations at face value, this column demonstrates that Ms. Martinez was  
11 paid at a rate that exceeds the state minimum wage rate during each and every week of  
12 employment at IBP.  
13  
14

15  
16 h) **Minimum Wage Rate.** ["Min Wage"]: The eighth column lists  
17 the applicable state minimum wage rate in effect during the given pay period. See  
18 Duffy Declaration at ¶ 2(d).  
19

20 7. **Ramon Moreno.** Attached as Exhibit 7 to the Olson Declaration is a  
21 Chart which accurately reflects the following information for plaintiff Ramon Moreno  
22 from July 23, 1995 (the date marking the end of Mr. Moreno's first weekly pay period  
23 at IBP) to the present:  
24  
25  
26

1           a) **Pay Period.** ["Pay Period"]: Column No. 1 of the comparative  
2 wage chart identifies the specific ending date for each workweek for which payroll  
3 data and work hours have been collected and analyzed for Mr. Moreno. See Olson  
4 Declaration at ¶ 5.

6           b) **Total Work Hours Recorded.** ["Tot. Work Hrs. Recorded"]: The  
7 second column of the chart lists the total hours of work time recorded by Mr. Moreno  
8 within the pay period. This column does not include time recorded for such non-work  
9 activities as vacations, sick time, holidays or jury duty. See Olson Declaration at ¶6.

11           c) **Total Regular Compensation for Week.** ["Tot. Reg. Comp.  
12 Wk."]: This third column sets forth in dollars the total gross straight time (regular)  
13 earnings received by Mr. Moreno for the hours worked in the given workweek. This  
14 column excludes any additional amounts Mr. Moreno may have received for overtime,  
15 sunshine pay, or other bonuses. As a result, in some instances he may have received  
16 more compensation (and therefore a higher actual rate of pay) than the amounts listed.  
17 See Olson Declaration at ¶ 7.

19           d) **Paid Hourly Rate.** ["Paid Hourly Rate"]: This fourth column is  
20 calculated by dividing the total regular paid compensation in column three by the total  
21 hours worked in column two. This paid hourly rate will typically be the contract rate  
22 earned by Mr. Moreno during the time period. See Olson Declaration at ¶ 8.

1           e) **Additional Time Per Week Claimed.** ["Add'l Time Per Wk  
2 Claimed"]: The fifth column lists the additional number of hours that Mr. Moreno  
3 claims to have worked during each workweek. This figure is based on the estimates  
4 provided in Mr. Moreno's own individual discovery responses. See Duffy  
5 Declaration at ¶ 2 and ¶ 5(k) and (l). To be conservative, IBP has used the highest  
6 estimates provided in Mr. Moreno's discovery responses. Id. at ¶ 2(a).  
7  
8

9           f) **Total Time Including Claimed Time.** ["Total Time Inc. Claimed  
10 Time"]: The sixth column is the sum of the recorded hours and the additional work  
11 hours claimed by Mr. Moreno as stated in Response to Interrogatories (the sum of the  
12 second and fifth columns). See Duffy Declaration at ¶ 2(b).  
13

14           g) **Claimed Hourly Rate.** ["Claimed Hourly Rate"]: The seventh  
15 column contains the claimed hourly rate that Mr. Moreno claims to have been paid for  
16 each workweek, assuming that all of his allegations concerning work hours are  
17 accepted as true. This rate of pay is calculated by dividing the total regular  
18 compensation for the week (the third column) by the total claimed hours for the week  
19 (the sixth column). See Duffy Declaration at ¶ 2(c). Even if the Court accepts all of  
20 Mr. Moreno's allegations at face value, this column demonstrates that Mr. Moreno  
21 was paid at a rate that exceeds the state minimum wage rate during each and every  
22 week of employment at IBP.  
23  
24  
25  
26

1           h) **Minimum Wage Rate.** ["Min Wage"]: The eighth column lists  
2 the applicable state minimum wage rate in effect during the given pay period. See  
3 Duffy Declaration at ¶ 2(d).  
4

5           8. **Ismael Rodriguez.** Attached as Exhibit 8 to Olson Declaration is a  
6 Chart which accurately reflects the following information for plaintiff Ismael  
7 Rodriguez from July 1, 1995 to the present.  
8

9           a) **Pay Period.** ["Pay Period"]: Column No. 1 of the comparative  
10 wage chart identifies the specific ending date for each workweek for which payroll  
11 data and work hours have been collected and analyzed for Mr. Rodriguez. See Olsen  
12 Declaration at ¶ 5.  
13

14           b) **Total Work Hours Recorded.** ["Tot. Work Hrs. Recorded"]: The  
15 second column of the chart lists the total hours of work time recorded by  
16 Mr. Rodriguez within the pay period. This column does not include time recorded for  
17 such non-work activities as vacations, sick time, holidays or jury duty. See Olson  
18 Declaration at ¶ 6.  
19  
20

21           c) **Total Regular Compensation for Week.** ["Tot. Reg. Comp.  
22 Wk."]: This third column sets forth in dollars the total gross straight time (regular)  
23 earnings received by Mr. Rodriguez for the hours worked in the given workweek.  
24 This column excludes any additional amounts. Mr. Rodriguez may have received for  
25  
26

1 overtime, sunshine pay, or other bonuses. As a result, in some instances he may have  
 2 received more compensation (and therefore a higher actual rate of pay) than the  
 3 amounts listed. See Olson Declaration at ¶ 7.

4  
 5 d) **Paid Hourly Rate.** ["Paid Hourly Rate"]: This fourth column is  
 6 calculated by dividing the total regular paid compensation in column three by the total  
 7 hours worked in column two. This paid hourly rate will typically be the contract rate  
 8 earned by Mr. Rodriguez during the time period. See Olson Declaration at ¶ 8.

9  
 10 e) **Additional Time Per Week Claimed.** ["Add'l Time Per Wk  
 11 Claimed"]: The fifth column lists the additional number of hours that Mr. Rodriguez  
 12 claims to have worked during each workweek. This figure is based on the estimates  
 13 provided in Mr. Rodriguez' own individual discovery responses. See Duffy  
 14 Declaration at ¶ 2 and ¶ 5(m) and (n). To be conservative, IBP has used the highest  
 15 estimates provided in Mr. Rodriguez' discovery responses. Id. at ¶ 2(a).

16  
 17 f) **Total Time Including Claimed Time.** ["Total Time Inc. Claimed  
 18 Time"]: The sixth column is the sum of the recorded hours and the additional work  
 19 hours claimed by Mr. Rodriguez as stated in Response to Interrogatories (the sum of  
 20 the second and fifth columns). See Duffy Declaration at ¶ 2(b).

21  
 22 g) **Claimed Hourly Rate.** ["Claimed Hourly Rate"]: The seventh  
 23 column contains the claimed hourly rate that Mr. Rodriguez claims to have been paid  
 24  
 25  
 26

1 for each workweek, assuming that all of his allegations concerning work hours are  
 2 accepted as true. This rate of pay is calculated by dividing the total regular  
 3 compensation for the week (the third column) by the total claimed hours for the week  
 4 (the sixth column). See Duffy Declaration at ¶ 2(c). Even if the Court accepts all of  
 5 plaintiffs' allegations at face value, this column demonstrates that Mr. Rodriguez was  
 6 paid at a rate that exceeds the state minimum wage rate during each and every week of  
 7 employment at IBP.  
 8

9  
 10 h) **Minimum Wage Rate.** ["Min Wage"]: The eighth column lists  
 11 the applicable state minimum wage rate in effect during the given pay period. See  
 12 Duffy Declaration at ¶ 2(d).  
 13

14 DATED this 29<sup>th</sup> day of March, 2000.  
 15

16 LANE POWELL SPEARS LUBERSKY LLP

17  
 18 By 

Douglas E. Smith, WSBA No. 17319

Barbara J. Duffy, WSBA No. 18885

Attorneys for Defendant IBP, inc.  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26

DEFENDANT'S LR 56.1 STATEMENT OF FACTS IN  
 SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
 DISMISSING STATE LAW MWA CLAIMS - 24

115386.0001\675865.1

LANE POWELL SPEARS LUBERSKY LLP  
 SUITE 4100  
 1420 FIFTH AVENUE  
 SEATTLE, WA 98101  
 (206) 223-7000